

STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD

**DIVISION OF WATER RIGHTS**

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In the Matter of License 12392 (Application 27644)

**MS Rialto North Douglas CA, LLC**

**ORDER REVOKING LICENSE**

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SOURCE: Unnamed Stream Tributary to Mather Lake thence Morrison Creek thence Sacramento River

COUNTY: Sacramento County

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**WHEREAS:**

1. License 12392 was issued to Archel C. Cupp and Mary W. Cupp on March 8, 1989 pursuant to permitted Application 27644, and was recorded by the County Recorder of Sacramento County on March 28, 1989 in Book 331, Page 1448.
2. MS Rialto North Douglas CA, LLC (Licensee) is the current water right holder of water right License 12392. Larry Gualco (Division President) is the authorized representative for Licensee.
3. Permit 20763 was filed to cover 16.4 acre-feet of overage storage in conjunction with License 12392 (8 acre-feet) for a total of 24.4 acre-feet of storage in one reservoir.
4. On November 24, 2009, the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), received a signed (by Licensee's authorized representative) Revocation Request form for License 12392.
5. A telephone conversation with Eric Johnson (Director of Land Operations) took place on December 15, 2009. In this conversation, Mr. Johnson said that the water from the unnamed stream is not and will not be diverted or stored in the new subdivision.
6. Division staff inspected the reservoir project covered by Permit 20763 and License 12392 on May 19 2010. Staff found that the reservoir site had been altered and a housing development constructed around the reservoir site. The reservoir site was reduced to a stormwater retention basin. Division staff confirmed that no stream channels flow into the retention basin.
7. By signing the voluntary request for revocation, Licensee waived the right to the hearing and notice requirements set forth in Water Code sections 1675 and 1675.1



**THEREFORE:**

It is ordered that License 12392 is hereby revoked by the State Water Board, and the water is declared to be subject to appropriation. This revocation may not result in additional water being available for new appropriations if there are applicable restrictions due to past State Water Board decisions regarding water availability.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY  
JOHN O'HAGAN FOR:

*Victoria A. Whitney*  
*Deputy Director for Water Rights*

Date: JUL 14 2010





STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD  
DIVISION OF WATER RIGHTS

## License for Diversion and Use of Water

Page 1 of 2

APPLICATION 27644

PERMIT 18916

Amended LICENSE 12392

### THIS IS TO CERTIFY, That

Archel C. Cupp and Mary W. Cupp  
12515 Douglas Road  
Rancho Cordova, CA 95670

have made proof as of **October 20, 1988** (the date of inspection) to the satisfaction of the State Water Resources Control Board of a right to the use of the water of **Unnamed Stream in Sacramento County**

tributary to **Morrison Creek thence Sacramento River**

for the purpose of **Recreational and Fish and Wildlife Preservation and Enhancement uses**

under Permit **18916** of the Board and that the right to the use of this water has been perfected in accordance with the laws of California, the Regulations of the Board and the permit terms; that the priority of this right dates from **January 31, 1983** and that the amount of water to which this right is entitled and hereby confirmed is limited to the amount actually beneficially used for the stated purposes and shall not exceed **eight (8) acre-feet per annum to be collected from November 1 of each year to May 1 of the succeeding year.**

This license does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.

(0000005)

After the initial filling of the reservoir, licensee's right under this license extends only to water necessary to keep the storage reservoir full by replacing water lost by evaporation and seepage, and to refill if emptied for necessary maintenance or repair.

(0000040)

#### THE POINT OF DIVERSION OF SUCH WATER IS LOCATED:

South 100 feet and West 3,880 feet from NE corner of projected Section 10, T8N, R7E, MDB&M, being within NE $\frac{1}{4}$  of NW $\frac{1}{4}$  of said Section 10.

#### A DESCRIPTION OF THE LANDS OR THE PLACE WHERE SUCH WATER IS PUT TO BENEFICIAL USE IS AS FOLLOWS:

Recreational and fish and wildlife preservation and enhancement uses at reservoir within SE $\frac{1}{4}$  of SW $\frac{1}{4}$  of projected Section 3, and NE $\frac{1}{4}$  of NW $\frac{1}{4}$  of projected Section 10, T8N, R7E, MDB&M, as shown on map on file with State Water Resources Control Board.

This license is subject to prior rights. Licensee is put on notice that during some years water will not be available for diversion during portions or all of the season authorized herein. The annual variations in demands and hydrologic conditions in the Sacramento River Basin are such that in any year of water scarcity the season of diversion authorized herein may be reduced or completely eliminated on order of this Board made after notice to interested parties and opportunity for hearing.

(0000090)



STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD  
DIVISION OF WATER RIGHTS

## License for Diversion and Use of Water

APPLICATION 27644  
Page 1 of 3

PERMIT 18916

LICENSE 12392

THIS IS TO CERTIFY, That Archel C. Cupp and Mary W. Cupp  
12515 Douglas Road  
Rancho Cordova, CA 95670

have made proof as of October 20, 1988 (the date of inspection)  
to the satisfaction of the State Water Resources Control Board of a right to the use of the water of  
an Unnamed Stream in Sacramento County

tributary to Morrison Creek thence Sacramento River

for the purpose of Irrigation, Recreational and Fish and Wildlife Preservation and  
Enhancement uses

under Permit 18916 of the Board and that the right to the use of this water has been perfected  
in accordance with the laws of California, the Regulations of the Board and the permit terms; that the  
priority of this right dates from January 31, 1983 and that the amount of water to which  
this right is entitled and hereby confirmed is limited to the amount actually beneficially used for the stated  
purposes and shall not exceed eight (8) acre-feet per annum to be collected from  
November 1 of each year to May 1 of the succeeding year. The maximum  
withdrawal in any one year shall not exceed 8 acre-feet.

This license does not authorize collection of water to storage outside of the  
specified season to offset evaporation and seepage losses or for any other  
purpose.

(0000005)

### THE POINT OF DIVERSION OF SUCH WATER IS LOCATED:

South 100 feet and West 3,880 feet from NE corner of projected Section 10, T8N,  
R7E, MDB&M, being within NE $\frac{1}{4}$  of NW $\frac{1}{4}$  of said Section 10.

### A DESCRIPTION OF THE LANDS OR THE PLACE WHERE SUCH WATER IS PUT TO BENEFICIAL USE IS AS FOLLOWS:

Recreational and fish and wildlife preservation and enhancement uses at  
reservoir within SE $\frac{1}{4}$  of SW $\frac{1}{4}$  of projected Section 3, and NE $\frac{1}{4}$  of NW $\frac{1}{4}$  of projected  
Section 10, and irrigation of one acre within SW $\frac{1}{4}$  of SW $\frac{1}{4}$  of projected  
Section 3, all within T8N, R7E, MDB&M, as shown on map on file with State  
Water Resources Control Board.

This license is subject to prior rights. Licensee is put on notice that during some years water will not be available for diversion during portions or all of the season authorized herein. The annual variations in demands and hydrologic conditions in the Sacramento River Basin are such that in any year of water scarcity the season of diversion authorized herein may be reduced or completely eliminated on order of this Board made after notice to interested parties and opportunity for hearing.

(0000090)

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*Licensee shall allow representatives of the State Water Resources Control Board and other parties as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this license.*

*The quantity of water diverted under this license is subject to modification by the Board if, after notice to the licensee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.*

*Pursuant to California Water Code Sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this license, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.*

*This continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this license with a view to eliminating waste of water and to meeting the reasonable water requirements of licensee without unreasonable draft on the source. Licensee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this license and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.*

*The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the licensee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Sec. 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust.*

*Reports shall be filed promptly by licensee on appropriate forms which will be provided for the purpose from time to time by the Board.*

*The right hereby confirmed to the diversion and use of water is restricted to the point or points of diversion herein specified and to the lands or place of use herein described.*

*This license is granted and licensee accepts all rights herein confirmed subject to the following provisions of the Water Code:*

Section 1625. Each license shall be in such form and contain such terms as may be prescribed by the Board.

Section 1626. All licenses shall be under the terms and conditions of this division (of the Water Code).

Section 1627. A license shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code) but no longer.

Section 1628. Every license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a license is issued takes the license subject to the conditions therein expressed.

Section 1629. Every licensee, if he accepts a license does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any license granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any licensee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Section 1630. At any time after the expiration of twenty years after the granting of a license, the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State shall have the right to purchase the works and property occupied and used under the license and the works built or constructed for the enjoyment of the rights granted under the license.

Section 1631. In the event that the State, or any city, city and county, municipal water district, irrigation district, lighting district, or political subdivision of the State so desiring to purchase and the owner of the works and property cannot agree upon the purchase price, the price shall be determined in such manner as is now or may hereafter be provided by law for determining the value of property taken in eminent domain proceedings.

Dated:

**MARCH 08 1989**

STATE WATER RESOURCES CONTROL BOARD

*Walter J. Pettit*  
Chief, Division of Water Rights

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*Licensee shall allow representatives of the State Water Resources Control Board and other parties as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this license.*

*The quantity of water diverted under this license is subject to modification by the Board if, after notice to the licensee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.*

*Pursuant to California Water Code Sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this license, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.*

*This continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this license with a view to eliminating waste of water and to meeting the reasonable water requirements of licensee without unreasonable draft on the source. Licensee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this license and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.*

*The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the licensee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Sec. 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust.*

*Reports shall be filed promptly by licensee on appropriate forms which will be provided for the purpose from time to time by the Board.*

*The right hereby confirmed to the diversion and use of water is restricted to the point or points of diversion herein specified and to the lands or place of use herein described.*

*This license is granted and licensee accepts all rights herein confirmed subject to the following provisions of the Water Code:*

Section 1625. Each license shall be in such form and contain such terms as may be prescribed by the Board.

Section 1626. All licenses shall be under the terms and conditions of this division (of the Water Code).

Section 1627. A license shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code) but no longer.

Section 1628. Every license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a license is issued takes the license subject to the conditions therein expressed.

Section 1629. Every licensee, if he accepts a license does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any license granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any licensee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Section 1630. At any time after the expiration of twenty years after the granting of a license, the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State shall have the right to purchase the works and property occupied and used under the license and the works built or constructed for the enjoyment of the rights granted under the license.

Section 1631. In the event that the State, or any city, city and county, municipal water district, irrigation district, lighting district, or political subdivision of the State so desiring to purchase and the owner of the works and property cannot agree upon the purchase price, the price shall be determined in such manner as is now or may hereafter be provided by law for determining the value of property taken in eminent domain proceedings.

Dated: **DECEMBER 6 1993**

STATE WATER RESOURCES CONTROL BOARD

*[Signature]*  
Chief, Division of Water Rights

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD  
**DIVISION OF WATER RIGHTS**

**ORDER**

APPLICATION 27644 PERMIT 18916 LICENSE 12392

ORDER CORRECTING PURPOSE OF USE, PLACE OF USE  
AND ISSUANCE OF AMENDED LICENSE

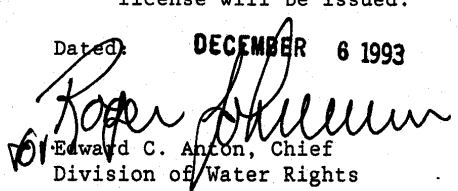
**WHEREAS:**

1. License 12392 was issued to Archel C. Cupp and Mary W. Cupp on March 8, 1989 and was recorded with the County Recorder of Sacramento County on March 31, 1989 in Book 890331, Page 1445.
2. The licensee requested deletion of irrigation as a purpose of use via a telephone conversation with State Water Resources Control Board (State Water Board) staff on May 20, 1993. State Water Board staff sent a letter confirming the telephone conversation to the licensee on May 27, 1993. The correction to the purpose of use will also delete the maximum withdrawal amount from the reservoir and the irrigated land from the place of use.
3. The State Water Board has determined that said corrections will not constitute a new right nor operate to the injury of any other lawful user of water and that good and sufficient cause has been shown for said corrections.

**NOW, THEREFORE, IT IS ORDERED THAT:**

1. The description of the purpose of use under this license be corrected to read as follows:  
  
Recreation, Fish and Wildlife Preservation and Enhancement uses.
2. The description of the amount of water collected to storage under this license be corrected to read as follows:  
  
Eight (8) acre-feet per annum to be collected from November 1 of each year to May 1 of the succeeding year.
3. The description of the place of use under this license be corrected to read as follows:  
  
Recreational and fish and wildlife preservation and enhancement uses at reservoir within SE $\frac{1}{4}$  of SW $\frac{1}{4}$  of projected Section 3, and NE $\frac{1}{4}$  of NW $\frac{1}{4}$  of projected Section 10, within T8N, R7E, MDB&M, as shown on map on file with State Water Resources Control Board.
4. Due to the number of corrections to License 12393 an amended license will be issued.

Dated: **DECEMBER 6 1993**

  
Edward C. Anton, Chief  
Division of Water Rights

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